

REMARKS

Claims 1 to 10 and 16, presumably of the substituted claims of May 20, 2005, are under consideration.

Claims 11 to 15 and 17 to 21, presumably of the substituted claims of May 20, 2005, stand withdrawn from consideration.

New claims 22 to 24 are being submitted.

New claim 22 is based on claim 1 and Figs. 4 and 5.

New claim 23 is based on Figs. 4 and 5.

New claim 24 is based on Fig. 3.

The Office Action refers to Election/Restrictions.

Applicant's election without traverse of species A, Figs. 4 and 5 are in the reply filed on 7/16/2008 is acknowledged. However, claims 18-21 do not read on the elected species because the elected species shown in Figs 4 and 5 do not include the "stabilizing fins" included in claim 18. Accordingly only claims 1-10 and 16 read on the elected species and claims 11-15 and 18-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b).

It is believed that claim 17 stands in addition withdrawn from consideration.

The Office Action refers to the Specification

The disclosure is objected to because specification appears to be a translation from a foreign language and includes informalities inherent therewith such as lacking the appropriate headings and lacking detailed description of the subject matter of claims 3-9.

Appropriate correction is required.

There are two specifications in this case:

1. The originally filed application without any headings and published under number WO 2005/042,986 A1
2. The Substitute application with some headings filed May 20, 2005 with the International Searching Authority

As the present Office Action of October 30, 2008 as well as the previous Office Action of June 9, 2008 do not officially recognize the prior filing of the Substitute Application on May 20, 2005, the question arises whether the Original PCT application or the Substitute Application were considered when preparing the Office Action of October 30, 2008.

The version without appropriate headings referred to in the Office Action of October 30, 2008 is deemed to be the originally filed PCT application, since the Substituted Application contains some headings. Thus probably the Office Action was prepared based on the originally filed PCT-application completely without headings and not on the much improved substitute application containing some headings and filed May 20, 2005 with the International Searching Authority.

Since the Office Actions of June 9, 2008 and of October 30, 2008 were presumably issued based on a superceded original version of this application which had been superceded by the Substitute

Application filed May 20, 2005, applicant respectfully requests reissuance of these Office Actions in view of the substantial improvements of the Substitute Application filed May 20, 2005.

As to the detailed description of the subject matter of claims 3 to 9, applicant is not sure to which version of the application the Office Action refers to. Applicant further observes that at this point in time none of claims 3 to 9 has been allowed and that future changes in the language of claim 3 to 9 are quite probable. It is respectfully proposed to include the subject matter of claims 3 to 9 into the description as soon as the question of the application version is resolved and as soon as allowable subject matter has been found and indicated.

Official recognition of the filing of the Substitute Application on May 20, 2005 is respectfully requested. As the substitute application contains some headings and much improved language as compared with the originally filed application, reconsideration of the correction requirement is respectfully requested.

There arises also the question of claim designation. The valid claims 1 to 21 were filed on May 20, 2005 under the requirements of the PCT-treaty and the claims under consideration are "PCT substituted" claims. As there is no official claim designation "PCT substituted", it was believed that the designation of "previously presented" comes closest in designating the status of the claims.

The Office Action refers to the Drawings

The drawings stand objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 4-9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicant submits two additional drawing sheets labeled as "Replacement Sheet".

The Office Action refers to Claim Rejections - 35 USC §112.

Claims 1-10 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to

conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. The claims were examined as best understood.

Based on the discussion above, it is not clear whether the Office Action refers to the original PCT application claims or to the claims of the Substituted application filed May 20, 2005. Applicant will make corrections as soon as it becomes clear to which set of claims the Office Action is referring to.

The Office Action refers to Claim Rejections - 35 USC § 102 and 103.

Claims 1-9, as best understood, stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Regensburger (US 5,232,322). Regensburger discloses a fastening pin comprising elastic protrusions (4) located around a core (11). The protrusions are disclosed as having an acute angle and to come in a variety of shapes and dimensions (Figs. 4-13) which can be used together (see Abstract) to make for different heights and shapes along the shaft of the fastener. It is further disclosed that the protrusions and core can be made of different materials (see Abstract).

Applicant respectfully traverses.

The reference Regensburger does not teach “elastic protrusions (4)”, but teaches in column 2, line 44 “the anchoring members 4 are dish-shaped”. Claim 1 as amended of the present application further specifies “wherein each protrusion covers an angle of less than 90 degrees around the shank,”. While a dish covers an angle of 360 degrees, the protrusion (2) according to the present invention covers an angle of less than 90 degrees.

Figs. 4 to 13 of the reference Regensburger show a variety of shapes, however all these shapes are dish-shaped. Applicant urges that the protrusions of

claim 1 of the present application patentably distinguish over the dish shapes of the reference Regensburger.

Claims 10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ide (US 6,371,710). Ide discloses a fastening pin (10) including a point (44) in the form of an elastic material (see Fig. 2). The masking strip is only included in the claims as an intended use.

Applicant respectfully disagrees.

The reference Ide in column 2, lines 23 to 29 teaches “an attachment system 10 that is particularly suitable for use with a sporting helmet, such as a football helmet. The system 10 includes a shock attenuation system 12 associated with a sporting helmet shell 14, a fit member 16 associated with the sporting helmet, and an attachment member 18 for attaching, preferably releasably and flexibly attaching, the fit member 16 to the shock absorption system 12.”. Contrary to the Office Action, the attachment system 10 of the reference Ide is certainly no fastening pin.

According to the reference Ide, column 3, lines 10 and 11, “a main body extending, preferably perpendicularly, away from the base 40.”. The reference Ide continues in column 3, lines 29 to 32: “The body 44 extends away from the top surface 46 of the base 40, preferably substantially normal thereto, and has a width dimension conforming to that of the base 40 and a length or height of about 11/16 of an inch.”. Thus the body 44 of the

reference has a rectangular shape in clear contrast to the requirement of a cylindrical shank in claim 10 of this application as amended.

Claim 10 has been amended to recite the masking strip as a full feature of claim 10.

Claim 10 further requires a presence of flexible protrusions for engaging a predrilled hole (3). The reference Ide fails to suggest or teach flexible protrusions and/or engaging of a predrilled hole.


The Office Action refers to Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

While the references show the state of the art at the time of their publication, these references do neither anticipate nor render obvious the present invention.

Reconsideration of all outstanding rejections is respectfully requested.

Respectfully submitted,
Małgorzata Wesołowska

By: 
Horst M. Kasper, her attorney
13 Forest Drive, Warren, N.J. 07059
Tel.: (908)526-1717; Reg. No. 28559
Attorney's Docket No.: MID202

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